

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of :)	
)	
Your Health with Dr. Ditty)	
)	CSR 6293
Video Programming Accessibility)	
)	
Petition for Waiver of Closed Captioning)	
Requirements)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 16, 2005

Released: February 18, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we address a petition for exemption from Section 79.1 of the Commission's rules,¹ implementing Section 713 of the Communications Act of 1934, as amended (the "Act"),² filed by Dr. Jack F. Ditty, producer of the television program "Your Health with Dr. Ditty" ("Your Health"). Telecommunications for the Deaf, Inc. ("TDI"), National Association of the Deaf ("NAD"), The Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), and Self Help for Hard of Hearing People ("SHHH") filed a consolidated opposition to the petition for exemption.³ For the reasons discussed below, the petition is denied, to the extent stated herein.

2. In *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, the Commission established rules and implementation schedules for the closed captioning of video programming.⁴ In enacting Section 713, Congress recognized that, in certain limited situations, the costs of captioning might impose an undue burden on video programming providers or owners, and it authorized the Commission to adopt appropriate exemptions.⁵ Congress defined "undue burden" to mean "significant difficulty or expense."⁶ When determining if the closed captioning requirements will impose an undue burden, the statute requires the Commission to consider the following factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the

¹ 47 C.F.R. § 79.1.

² 47 U.S.C. § 613.

³ TDI, NAD, DHHCAN, and SHHH argue that grant of an exemption from the closed captioning rules is not warranted because Petitioner has not provided sufficient evidence to demonstrate that an exemption is warranted under the four statutory exemption factors.

⁴ *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 13 FCC Rcd 3272 (1997) ("Report and Order").

⁵ 47 U.S.C. § 613(d)(1).

⁶ 47 U.S.C. § 613(e).

operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.⁷ A petition for exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to close caption video programming would cause an undue burden.⁸ Petitioners also are instructed to submit any other information they deem appropriate and relevant to the Commission's final determination.⁹

II. DISCUSSION

3. Your Health submitted a petition for exemption requesting a waiver from compliance with the captioning requirements. It asserts that the program "Your Health with Dr. Ditty" is a locally produced and distributed non-news program with no repeat value, pursuant to Section 79.1(d)(8) of the Commission's rules.¹⁰ However, the Commission intended that the exemption for locally produced and distributed non-news programming with limited repeat value be a narrowly focused exemption. It is intended to apply only to a limited class of truly local materials, including, for example, local parades, local high school and other nonprofessional sports, live unscripted local talk shows and community theatre productions.¹¹ Moreover, the Commission concluded that the programming in question would have to be locally created and not networked outside of the local service area or market of a broadcast station.¹² Your Health fails to explain or provide support for its contention that the scope of its program relates only to local issues and that the program is truly local in nature. In addition, because Your Health provides no information on the extent of distribution of its program, it is difficult to determine whether Petitioner's programming reaches beyond its locale. Therefore, because Your Health has failed to provide sufficient information, we are unable to determine whether the Section 79.1(d)(8) exemption applies here.¹³ However, the option of an undue burden exemption still remains available if Petitioner makes the proper showing.

4. Section 79.1(f) requires a petition for exemption from the closed captioning requirements to demonstrate that compliance would cause significant difficulty or expense.¹⁴ Your Health's petition, however, fails to disclose detailed information regarding finances and assets, gross or net proceeds, or sponsorships solicited for assisting in captioning. Your Health provided no documentation from which the financial condition of the program can be assessed. Without such documentation, it is impossible for the Commission to determine whether Your Health has sufficient justification supporting an exemption from the closed captioning requirements. Our decision herein is without prejudice to Your Health bringing a future petition for exemption that adequately documents that the Section 79.1(d)(8) exemption is applicable to "Your Health with Dr. Ditty" or that compliance with our rules will impose an undue burden. Implicit in the Section 79.1(f) requirement of a showing as to the financial resources of a petitioner, such as Your Health, is the question of the extent to which the distributors of its programming can be called upon to contribute towards the captioning expense. Thus, any subsequent petition should document whether Your Health solicited captioning assistance from the distributors of its programming and the response to these solicitations. Absent such a petition, Petitioner is given 3 months from the release date of this *Order* to come into complete compliance with the rules.

⁷ *Id.*; see also 47 C.F.R. § 79.1(f).

⁸ 47 C.F.R. § 79.1(f)(2).

⁹ 47 C.F.R. § 79.1(f)(3).

¹⁰ Petition at 1.

¹¹ See *Report and Order*, 13 FCC Rcd 3272, 3348 (1997).

¹² *Id.*

¹³ See 47 C.F.R. § 79.1(d)(8).

¹⁴ 47 C.F.R. § 79.1(f)(2).

III. ORDERING CLAUSE

5. Accordingly, **IT IS ORDERED** that the petition for exemption from the closed captioning requirements of Section 79.1 of the Commission's rules **IS DENIED**. Petitioner must comply with the captioning requirements within 3 months from the release date of this *Order*.

6. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ 47 C.F.R. § 0.283.